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ABSTRACT

This paper describes why freedom of information (FOI) is important to scientists, the restrictions which the Official Secrets Act of 1951 places upon release of information by public officials in New Zealand, reasons for covert official resistance to FOI as suggested by information science literature, and how changes in the economic management of science along with exemptions provided in a recently introduced Official Information Bill will undermine achievement of true FOI in New Zealand. Issues discussed include the importance of information in post-industrial societies, the effect of government policy on the free flow of scientific information, the relationship between power and control of information, the economics of information, and the implications of a trend toward privatization of government scientific activities as a means of insuring a return on taxpayer investment. It is concluded that prospects for true freedom of scientific information are poor unless New Zealand politicians see it as giving them greater control of government research accountability and unless they are willing to reduce the number of exemptions in proposed FOI legislation and to subject themselves and government scientists to independent judicial review. (ESR)

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SCIENCE INFORMATION PAPER NO. 19

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Freedom of Scientific Information

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Abstract

Literature on science and secrecy is reviewed together with information-science surveys of political and economic aspects of information flow. Prospects for true freedom of information seem poor unless politicians see it as giving them greater control of government research accountability and unless they are willing to reduce the number of exemptions and to subject themselves and government scientists to independent judicial review.

Keywords

Freedom of information, economics of information, political control of information.

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SCIENCE INFORMATION PAPER NO. 19

Freedom of Scientific Information

J. G. Gregory

> "A post-industrial society is basically an information society. Exchange of information in terms of various kinds of data processing, record keeping, market research and so forth is the foundation for most economic exchanges .... The strategic resource of the post-industrial society becomes theoretical knowledge, just as the strategic resource of an industrial society is money capital, and the strategic resource of a pre-industrial society is raw materials."

(Daniel Bell, Welcome to the post-industrial society, Libraries in a Post-Industrial Society, Leigh Estabrook (ed.), Phoenix, Arizona, Oryx Press, 1977, p. 3-7.)

The USA has moved into a post-industrial society, defined as one in which information and service industries now occupy the greatest segment of the labour force, and it seems likely that New Zealand will do the same before long, if indeed it has not already done so.

As a resource, information is somewhat unusual. Like love, it can be given without the donor losing it, and like mercy, it can bless both him that gives it and him that takes it away. Fragments may have no use until pieced together with other fragments by an "intelligence" unit that can see a use in the composite so formed; a fragment may be the key to solving, jigsaw-like, a previously intractable problem, and so may have an extremely high potential value. Any value it has, however, is only realised in its transmission and interpretation. Even so, in most circumstances, it has economic costs attached to it.

It may assist decision making, and it is said that a good test of information is its ability to reduce uncertainty. A good definition is that it is a symbol or set of symbols which has a potential for meaning (Sylvia Faibisoff and Donald Ely, Information and information needs. Information Reports and Bibliographies, 1976, vol. 5, no. 5, p. 2-16). In any event, it can be used to enlighten - or to deceive.

It can be given, sold, stolen, leaked, passed around. It can be suppressed, submerged, mislaid, distorted, counterfeited. But it is seldom destroyed, even by the most thorough and systematic repressive regime. Released, like the contents of Pandora's box, it cannot be returned, but it may wreak havoc in unforeseen ways and in unexpected quarters. Hence a widespread desire to keep the lid firmly closed on it.

The public service and secrecy in New Zealand

> "The struggle of the future, I think, will be between the democrat and the technocrat. The weapon of the democrat will be openness, the weapon of the technocrat will be secrecy."

(Sir Guy Powles, Proceedings of the 1980 Conference on Freedom of Information and the State, Wellington, New Zealand Association of Scientists, 1981.)

All public servants in New Zealand sign a declaration:

> "That I will not, whether during my employment in the Public Service or at any time thereafter, divulge or communicate or directly or indirectly disclose any information acquired by me in the course of my duties or otherwise in my capacity as a Public Servant to any person whomsoever, otherwise than in the discharge of my duties or except by the direction or with the permission of the Minister administering a Department to which I may be attached."

The wording is all-embracing.

Under the Official Secrets Act 1951 an offence is committed even if the employee has done no more than fail "to take reasonable care of" any such information. An accused person is deemed to have "purposes prejudicial to the safety or interest of the State" unless the contrary is proved. It is small wonder that an attitude persists that if one is in doubt, one stamps a document "Confidential".

The restrictions are firmly adhered to, and leaks of information during late 1981 are reported to be being investigated within the service and by the Police, and a reminder of official obligations with respect to secrecy has been issued to all public servants. Because the leaks occurred during an election campaign, they were suspected of being politically motivated. To take a hypothetical case, the Public Service ethic demands that the public servant be loyal to his Minister and the Government even when he knows that they are suppressing information for party-political ends or otherwise behaving unethically themselves.

Nevertheless an Official Information Bill is subject to public comment at the time of writing. The tenor of many such comments reported in the national press is that a repeal of the Official Secrets Act is welcome, but the proposed legislation falls far short of providing freedom of information (FOI). This review discusses why FOI is important to scientists. It also covers information science literature, mainly from Canada and the USA which suggests reasons for covert official resistance to FOI, and suggests how some changes in economic management of science in New Zealand taken with various exemptions in the legislation will undermine achievement of true FOI, whatever "official information" legislation may purport to achieve.

Science and secrecy

"The decisions which we make today in the fields of science and technology determine the tactics, then the strategy, and finally the politics of tomorrow."

(Lord Zuckerman, on military technology, quoted by E. P. Thompson Protest and Survive, E. P. Thompson and Dan Smith (eds), Harmondsworth, Penguin Books, 1980.)

The traditional view of the progress of science is that it depends on open assessment of all that is done, and experimental methods need to be described openly in sufficient detail for anyone to repeat them. This openness is particularly important for the public when, for example, health hazards are being assessed. For example, US experiments on the teratogenicity of 2,4,5-T were scrutinised by New Zealand scientists on behalf of the Health Department (and rejected as being scientifically suspect, although other scientists still support their results). As John Offenberger said at a (closed) public forum organised by New Zealand Association of Scientists, who have been leading activists in promotion of FOI,

"The most important feature of science is its public character. Its findings must, in principle, be open to testing by anyone. This requires the free and open interchange of scientific knowledge. No system of professional ethics which represses the free dissemination of scientific findings can be acceptable to the scientist. It runs counter to the scientific method."

(New Zealand Listener, 15 May 1976, p. 20.)

Unfortunately, it is becoming realised that this idealised picture is not by any means representative of science and its application in general, any more than the idealised "null hypothesis" procedure represents the normal scientific method.

Similarly, national FOI legislation and draft legislation commonly exempts "economic interest", presumably including scientific information, even though pretentious platitudes are used at international gatherings. A general resolution on the programme for natural sciences to the General Conference of Unesco emphasises -

"that economic and social progress and the improvement of the living conditions of all the peoples of the world, especially those suffering from extreme poverty, depend very largely on the mastery and judicious use of scientific and technological knowledge, which necessarily involves the free flow of such knowledge and the unimpeded transfer of technology."

The obvious area in which secrecy prevails over scientific freedom is national defence or armaments, but for equally obvious reasons, it is difficult to quote examples. It has been said that American scientists agreed to suppression of publication of anything to do with nuclear bombs during the second world war. It was also thought that the obvious gap in publication that resulted tipped off Russian scientists about the line of research being followed in the USA. Nevertheless secretiveness over armaments prevails, and recently a New Zealander working for the Stockholm International Peace Research Institute has been gaoled for bringing together and interpreting information from published sources about Swedish security. It should be remembered that Sweden pioneered FOI legislation.

During the second world war, the British imposed secrecy on research into the chemistry of penicillin, for security reasons despite misgivings about the ethics of such action. The "bureaucratic ordering-up of research under conditions of secrecy" (R. L. M. Synge, Wasteful research in pure and applied science, Interdisciplinary Science Reviews, 1979, vol. 4, p. 98-105) was thought to be the reason so many person-research-hours were spent - without useful outcome - on this project. Again, secrecy helped nobody.

On the other hand, the process of opening up science, particularly military and peaceful nuclear science, to the public has met with some opposition from scientists, who decry what they see as the resulting erosion of scientific objectivity. Alvin Weinberg, for example, said,

> "When scientists express opinions on scientific matters in the public forum they are not subject to the sanctions that regulate opinions expressed in the usual channels of scientific communication. Because these traditional sanctions do not operate, the extrascientific debate often tends to be irresponsible scientifically: lower standards of proof are demanded in the public than in the professional debate, and half-truths are too often perpetrated on the public by scientists .... If scientists allow themselves the right to speak sloppily on science in the public forum, I think that this habit could gradually encroach upon the scientific forum."

(Science, 1976, vol. 91, p. 341.)

This sort of argument was used by the then Minister of Science and Technology, Hon. L. W. Gander, to justify the designation by DSIR of special topics in which only authorised officers were allowed to make public pronouncements. (Science policy, New Zealand Science Review, 1976, vol. 33, p. 122-128.)

The official policy of DSIR (DSIR Manual) is that

> "All scientific officers in the Department are expected and encouraged to publish and publicise their work in a variety of ways."

Nevertheless,

> "Directors may limit the freedom of their staff to publicise scientific matters if the interests of the Department, the Government, or the public so demand. In particular, if matters of security, patent application, confidential information, or the interests of third parties are involved, decision on publication in any form is the responsibility of the Director, who in doubtful cases should confer with the Director-General."

Industrial scientists are used to secrecy. For one thing, disclosure can prejudice a patent claim. In any case, the patent procedure was designed to encourage disclosure and then to give a period of monopoly protection to the owner of the patent, so an initial period of secrecy is considered acceptable. The time factor often applies to secrecy in industrial science, and it is common for an embargo to be lifted after 2 or 3 years, when a firm has established any commercial advantage it needs. The philosophy seems to be that it is better to publish the information than have to take exceptional precautions against industrial espionage.

Where secrecy does prevail in industry is over matters of health and safety, and most cases of "whistle blowing" have involved employees revealing concealed hazards in products. Occasionally companies, such as health food firms, make health or safety a selling point but more commonly such advertising is considered "unethical" among advertisers and the risk of punitive court proceedings is usually avoided.

DSIR is often called on to make health and safety investigations. In most cases this is for another Department - presumably the "third party" referred to in the DSIR Manual - and the information gained is only revealed with permission from that Department. Sometimes, a time limit is negotiated or imposed. Because of difficulties in establishing causal relationships in such matters, any disclosures are normally cautious and guarded.

Nevertheless, many observers outside the public service would agree that most science is open. However, the matters that concern them most are most likely to be kept secret. These include the "scientific estate" type of activity in which scientists are thought to be promoting their own interests by indiscriminate development of their own fields (R. L. M. Synge, op. cit.). Much more important to them, however, are matters related to government policy, whether to do with security, commerce, health, or environment.

Information and power

> "The basis of socio-political control lies in the differential access to strategic information and, through this access, its control."

(Richard A. V. Diener, An information-based hypothesis for the evolution of socio-political power. Proceedings American Society for Information Science 1976, vol. 13, p. 75.)

The topic covered by the American Society for Information Science (ASIS) at its 1976 meeting was Information politics, and several reviews of the use of information as a source of power were presented. Some of the discussion centred on those known as the "information-poor" in society.

It seems a reasonable assumption that, in spite of universal education, greatly expanded technological ways of processing and distributing information, and the enormous involvement of people in both these functions, the majority of people - maybe 90%, according to C. K. Mick (Proceedings ASIS, 1976, vol. 13, p. 147) - are functionally "information illiterates". W. T. Dürr, in a remarkably frank analysis of the closed information cycle used in a city administration, also reviews the literature on information and power (Proceedings ASIS, 1976, vol. 13, microfiche 4, frames D9-G10). It seems widely agreed that in society there is normally a power elite made up of people with status, achievements and/or wealth and there is a knowledge elite, members of which may or may not support or be supported by the power elite. Scientists would form part of the knowledge elite.

Political power may lie in the control of information as much as in the control of money, both of which confer freedoms not held by those who do not possess the information or money. For the former, these comprise freedom to use and manipulate information, freedom to spread or withhold information in relation to any recipient, freedom to choose a time to reveal information to a chosen recipient, and freedom to deal with information so as to make it possible to accept, reject, or otherwise influence projects or programmes.

Ideally, FOI would mean the partial withdrawal of these freedoms from those possessing political power and their dispersal to the public at large, a process of "democratisation". In practice, it would mean undermining some of these freedoms in favour of the members of the knowledge elite holding different values from those in power. Organisations of all kinds, including lobby groups, political parties and community groups (and one might add the media), are seen as beneficial in that they hold the power elites in check, and organise and inform - and stabilise - significant elements of the public. They serve as mediators between the elite and the rest, promoting information flow from the elite and effecting representation of the rest to them.

Like the "robber barons" from all eras, there are information barons, who may use private or public funds to generate information or who may dominate its use and sometimes also have some form of influence or control over expenditure of public funds, for example through membership of statutory boards or committees.

Control of the bureaucrats

> "Anti-bureaucratic sentiment has taken hold like an epidemic. More and more people are apparently convinced that bureaucracy is whirling out of control and are both infuriated and terrified by the prospect."

(Herbert Kaufman, Fear of bureaucracy: a raging pandemic, Public Administration Review, 1981, vol. 41, p. 1-9.)

Within organisations, too, including government departments, there is a hierarchy of power in which control of information plays an important part, although of course it does not supplant other factors used in control. Information is used to facilitate decision making, and the provision or withholding of information influences the way decisions are made. (Anne Tsui and Chester Schriesheim, Information as a power source in organisations: a conceptual viewpoint, Proceedings ASIS 1980, vol. 17, p. 378-281.) A growing conviction in various governments that the growth of executive power is getting beyond control may be the best hope that FOI legislation will be supported by politicians. They have good reason to believe that mismanagement and waste would be revealed and that departments would be forced to discontinue some of their "disagreeable features" (John McMillan, Making government accountable: a comparative analysis of freedom of information statutes - part 1, New Zealand Law Journal 1977, p. 248-256).

As far as science is concerned, it has been pointed out that, in spite of the large percentage of government activity in Australia and by implication New Zealand (almost the largest of any OECD nation) and the considerable expenditure in absolute terms, there is no formal mechanism for ensuring that the work the government wants done is actually ever done (K. Gannicott, The management and administration of government research and development, Australian Journal of Public Administration 1979, vol. 38, p. 361-368). It seems likely that FOI legislation will be seen by the government primarily as a means of ensuring value for money spent on science, the power aspect being understood but not acknowledged explicitly.

Wealth of knowledge

> "Although highly visible institutions, most notably public libraries and commercial television, continue to foster the illusion that information is a free good, information resources do in fact cost something ....
>
> "Like materials and energy, then, information is a basic resource and the critical questions about any resource also apply to information: who has it, who wants it, how can you get it, and what are the terms of trade?"

(Anthony Oettinger, Information resources: knowledge and power in the 21st century, Science 1980, vol. 209, p. 191-198.)

A considerable amount of literature on the economics of information has been generated over the last decade, and a good review has been done by Gerald Prodrick (The peculiar and complex economic properties of information, Canadian Journal of Information Science, 1980, vol. 5, p. 89-92). Information can be seen to some extent as a "private good", in that a unit of it can be exclusively used by one consumer, just like any other consumer product or, say, a painting in a private collection. More commonly, it has many characteristics of a "public good", in that the cost of providing it is almost unaffected by the number of persons it can serve, and that it may have value to others as well as the intended user without incurring additional costs. "Non-excludability", that is the difficulty of confining information to any specific user, is a "public good" characteristic.

In any case, information is in many respects more a capital resource, to be regarded as an investment in human skills, than a consumable service. Access to it may still be restricted, however, and even when information itself is openly available, its use may be restricted, for example by copyright, licence, or patent.

There is often thought to be a tendency at all levels of government to seek monopoly control of information generated for it by classifying it as restricted or confidential, and this results in information being shifted more towards the "private good" end of the scale.

Modern technology, on the other hand, ranging from photocopying machines to bugging devices, may make exclusion increasingly difficult.

Public good versus privatisation

> "In the last generation, the federal government has experienced a sea change: it is itself doing less but influencing far more. It has at the same time become far more dependent upon institutions outside itself."

(Frederick Mosher, The changing responsibilities and tactics of the federal government, Public Administration Review 1980, vol. 40, p. 541-548.)

The public good aspect of government intervention is coming under increased parliamentary critical scrutiny in the UK, USA, Australia, New Zealand, and other nations facing similar problems of inflation and high government spending. The fundamental notion of public good was derived from Adam Smith, who ascribed only three roles to government: protecting a society from invasion by others; protecting individuals in a society from injustice or oppression; and erecting and maintaining certain public works and institutions which were beyond the capacity of individuals to undertake (Stephen Feinman, Information: public good vs. capital? Proceedings ASIS 1977, vol. 14, microfiche 3, frames D10-E9). Feinman sees it as being in the national interest for government to foster the collection of scientific information and to regulate its quantity, value, and content, but not under the "shroud" of public good.

The above quotation by Mosher summarises the increased emphasis on contracts and grants for research in the USA. In the UK, implementation of the Rothschild Report (Cmnd 4814, 1971) has revolutionised government support of science through the customer /contractor principle. A similar approach has been advocated for Australia (K. Gannicott, op. cit.).

In New Zealand, too, a charging policy for scientific work has been instituted, and there is strong pressure for a shift in emphasis to research for paying clients - the "third parties" referred to in the DSIR Manual. It is but a short step from having government research run on commercial lines to separating it off from government funding, partly or completely. This may be a real threat to certain types of research, e.g. environmental research. The significance of all this is that scientific information is increasingly coming into categories of exemption in the Official Information Bill, such as enabling "any Department or organisation to carry out commercial activities without prejudice or disadvantage" and protecting "information properly entrusted in confidence ... by any person outside the service of the Crown or of the Department or organisation" and "information that is subject to solicitor-client privilege".

Return on investment

> "We have, in fact, got to the end of the road, where the man who determines the objective for which applied research is necessary has got to justify the objective to a firm of shareholders, whether it be the electorate and their representatives in Parliament, or that somewhat elusive and inarticulate person, the shareholder in a Company."

(Lord Rothschild, Pure and applied research, Journal of the Royal Society of Arts 1972, p. 205-215.)

Parts of the public service-notably the trading departments - seem to be viewed in some quarters, including the present government, as an investment of taxpayers money. Just as with a company, the main obligation is to yield a good financial return on the shareholders' investment. In a talk to DSIR Directors in 1981, the view was expressed that science and technology should be sold rather than published freely - that was the acid test of its usefulness and went a long way towards ensuring that the results would actually be used. The first obligation would be to take out a patent, licence, plant breeders licence, or some form of contract with a user. Only if that failed, should the information be surrendered to the public domain. Presumably, the only sort of information the public would be entitled to would be an outline of the type of information sold and the type of organisation that bought it. Parliamentarians would presumably be happy that accountability was being seen to apply. It could be that the public would be satisfied without needing the full results of the science, or at least with limited disclosure at first and the possibility of fuller disclosure at a time to be decided by the customer.

However, the principle represents a clear shift in the power structure, in which the knowledge elite is brought more clearly under the control of the power elite. The public service scientist's information becomes decreasingly available to the public, and the scientist becomes more firmly a servant of the government and its clients and less a servant of the public. Scientific information takes on the characteristics of a private good. FOI becomes more necessary, but is more likely to be replaced by discretionary secrecy.

Operation of discretionary disclosure

> "... but we were at least smart enough to realize that the professional P.R. operation was as dead as the button hook industry .... So we eliminated the P.R. staff. And we called in the top ten or so people in the company and the telephone operators and told them they were the P.R. department."

(Robert Townsend. Up the Organisation 1971, London, Coronet Books.)

It seems unlikely that the situation of the previous generation of New Zealand scientists, in which DSIR had no official opinion on any scientific matter, will ever be regained. The tendency for science in the public service to be brought increasingly under control and to be increasingly specific to user needs is likely to continue.

Where research of general applicability is done, there is no real problem of secrecy, because the results are normally published openly in the scientific literature and, though hard to understand for the uninitiated, they can be accessed. Public interest is more likely to be centred on strategic information.

Information about what is being done and for whom will have to be compiled, and is already being compiled in some parts of some departments. It requires a small team of information officers or librarians, with skills and training in indexing and classification. It will have to be coordinated in head offices, although access should be possible through regional branches by use of computer or microfilm.

The important questions about the information content of the work done and about policies will continue to have to be answered by senior staff, and the volume of this work is likely to grow. In the legislation that is envisaged, one would expect that staff would follow the advice to Townsend (op. cit.) to be honest; if you don't know, say so; if you know but won't tell, say so. However, as it is drafted at present, the enquirer has no guarantee that this will be so.

The Official Information Bill meets few of the criteria of true FOI legislation, and unless it is amended in a major way very little change is required to most current methods of providing or concealing scientific information in government departments.

Exemptions and independent review

> "Ministers expressed the view that public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information. At the same time they recognised that it was necessary to strike a balance between the individual's right to know against the government's need, in the wider public interest, to withhold certain information from disclosure. This issue had to be addressed in developing any "Freedom of Information" legislation."

(Press release, Commonwealth Law Ministers Conference, Barbados, 1980.)

It has been pointed out that the revelations about the Watergate affair and the war in Vietnam would not have been made without the Freedom of Information (FOI) legislation in the USA. This is seen to be a powerful influence in the introduction of legislation in Canada (James Feeley, Freedom of Information: attitudes, rights, laws, and policy. Canadian Journal of Information Science, 1980, vol. 5, p. 1-9). This may be the reason that the Canadians are leading other nations with the Westminster style of parliamentary democracy in establishing FOI legislation. Feeley's concern was that the Canadian government had resisted incorporating judicial review into the operation of the legislation, but a later review paper by Elizabeth Longworth (Freedom of Information: What Progress Worldwide? Appendix to Discussion Paper by Sir Guy Powles, prepared for Coalition of Open Government, Wellington, for 1980 Conference on Freedom of Information and the State) describes strong provisions for appeal to the Federal Court.

Public pressure in most Western democracies has been leading to consideration of FOI legislation. However, many governments that seemingly support such legislation seem to be reluctant to curtail the number of exemptions available to them and relinquish Ministerial or official control in favour of independent judicial control. Canada, for example, includes in its exemptions economic interest (e.g. trade secrets, financial, commercial, scientific, technical information). It is difficult to think of any other category of information that could interest the public. The Australian Bill allows no judicial review. The UK has barely progressed beyond private members' bills for FOI.

The New Zealand Official Information Bill contains numerous exemptions, including -

(a) enabling departments to carry out commercial activities without prejudice or disadvantage and

(b) prejudice to "the substantial economic interests of New Zealand" (which presumably could be the same factors, such as scientific information, envisaged in the Canadian Bill).

In addition, although it uses the office of Ombudsman for review and establishes an Information Authority, it does not provide for independent judicial review.

As stated by Feeley (op. cit.):

"Parliament passes laws. Ministers administer them. When a citizen challenges these laws, the courts decide. FOI legislation with judicial review fits into this system; FOI legislation with ministerial review violates it."